+IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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Shamshuddin Vs. The Civil Judge (Junior Division), Jodhpur & Anr.

S.B. CIVIL WRIT PETITION NO.2852/2006.

Date of Order :: 9th October 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Vikas Balia, for the petitioner.
Mr. Prabhat Ojha, for the respondent No. 2.

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BY THE COURT:

In this writ petition, while questioning the order dated 12.04.2006 (Annex.4) passed by the Civil Judge (Junior Division), Jodhpur in Civil Original Suit No.243/1999, the petitioner (defendant-tenant) has pressed for consideration the proposition that if in a suit for eviction pending at the time of commencement of Rajasthan Rent Control Act, 2001 ('the Act of 2001'), the plaintiff amends the plaint with addition of the grounds of eviction allegedly coming into existence after commencement of the said Act of 2001, the suit cannot be proceeded under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 ('the Act of 1950');

and that for such supervening events, the plaint is required to be returned.

Background facts relevant for determination of the questions posed in this writ petition are that the respondent No.2 (plaintiff-landlord) filed a suit for eviction, recovery of arrears of rent and fixation of standard rent against the petitioner (defendant-tenant) on or about 30.10.1999 (copy of the plaint–Annexure-1). The plaintiff averred, inter alia, that he was engaged in transport business managing his own vehicles and carrying on the business in the name of Nidhi Transport at some rented premises located in front of Stadium; that he met with an accident on 02.05.1993 and has suffered about 80% disablement; that it has become necessary for him now to carry on the business from his own premises, and for this purpose the suit premises, adjoining his residence, would be included with his other premises; and thus, he required the suit premises reasonably and bona fide.

It appears that on or about 11.08.2003, the plaintiff moved an application (Annex.2) seeking amendment in the plaint essentially on the submissions that in view of the order passed by the High Court in Writ Petition No.6073/1993: Mahendra Lodha Vs. State, prohibiting carrying on of transport business inside Jodhpur city, the plaintiff was required to close down his transport business and, in view of the order so

passed by the High Court, he would now not be able to carry on the transport business in the suit premises located inside city area and, therefore, he would set up STD/ISD Telephone Booth, Computers, Photostat machines; and being a disabled person, he would now be able to carry on only with such business to earn his livelihood. The plaintiff, accordingly, sought substitution of paragraphs 19 to 22 in the plaint in conformity with the business now proposed to be carried on by him in the suit premises.

The petitioner has averred in the writ petition that the said application for amendment was filed after coming into force of the Act of 2001. It appears that the said application was contested by the petitioner but the same was allowed by the learned trial court on 01.04.2004.

After the application for amendment was allowed and issues were amended, the petitioner moved an application (Annex.3) purported to be under Order 14 Rule 2 CPC with the objection that the suit could not be proceeded with in view of the new Rent Control Act and the issue framed in that regard was required to be decided at the first.

By the order impugned, the learned trial court has proceeded to decide issue No.6(c) as a legal issue. It was contended on behalf of the petitioner that the plaintiff has taken a new ground of eviction after coming into force of the

Act of 2001; that the application for amendment could have been dealt with and decided by the learned trial court that has already been decided and allowed; but, the petitioner alleged, with allowing of the said amendment, the suit could not be proceeded with by the learned trial court and the plaint was required to be returned in view of coming into force of the new Act of 2001. The learned trial court has proceeded to reject such contention of the petitioner while observing that the amendment was allowed though the defendant-petitioner opposed the same; and the said order allowing amendment had become final. The learned trial court further observed that by the amendment aforesaid, nature of the suit was not changed at all and by virtue of Section 32 of the Act of 2001, the proceedings were required to be continued and decided as if the old Act remains in force and the new Act had not been enacted at all.

Assailing the order aforesaid, learned counsel Mr. Vikas Balia appearing for the petitioner has strenuously contended that by the very nature of the amendment carried out by the plaintiff, the suit on the basis of newly added ground of eviction would be deemed to have been instituted on the date of making of the application for amendment; and, learned counsel submitted, till the stage of deciding the application for amendment, of course, the learned trial court could have dealt

with the matter by virtue of the provisions of Section 32 of the Act of 2001; but, as soon as the amendment was allowed, the result had of institution of a new suit on a new ground of eviction; and such suit cannot be instituted after coming into force of the Act of 2001 before any other court and cannot be dealt with except under the said Act of 2001. On the other hand, learned counsel Mr. Prabhat Ojha appearing for the contesting respondent No.2 has duly supported the order impugned with the submissions that the petitioner raised the same objections at the time of consideration of the application for amendment that were rejected; and that by way of amendment, the plaintiff has not altered the nature of the suit but simply suggested the change in the mode of use of the premises in view of the subsequent events.

Having given a thoughtful consideration to the rival submissions, this Court is clearly of opinion that this writ petition remains totally bereft of substance and deserves to be dismissed with costs.

The baseless objection of the petitioner in relation to the procedure applicable to the suit at hands has rightly been rejected by the learned trial court while passing the order impugned. In the first place noticeable it is that so far the relief for eviction is concerned, the plaintiff has sought eviction on the grounds of reasonable and bona fide requirement and

default in payment of rent; and there has not been any change in the grounds of eviction. The plaintiff fundamentally suggested bona fide requirement of the suit premises for the purpose of his own business; and the mode of use being his transport business. The plaintiff pointed out the impossibility of such transport business being carried in the suit premises now in view of the orders passed by this Court in a Public Interest Litigation and, therefore, suggested his intention of setting up other business like STD booth; photocopier etc. in the suit premises while pointing out that due to disablement he was not in a position to carry on with the transport business any further while going away to a different location where entire of such transport business has since been shifted. The ground for eviction nevertheless remains that of reasonable and bona fide requirement of the suit premises for business purpose; and the suggestion that there has been any alteration in the ground of eviction and thereby any alteration in the cause of action, is fundamentally incorrect.

Moreover, even addition of a ground of eviction in the suit for eviction by way of amendment is not altogether prohibited and is rather approved by this Court as an acceptable principle. In the case of Udai Ram Vs. Smt. Ladi Bai : 1997 (1) RLW 508 when a revision petition was submitted to this Court challenging an order allowing an

application under Order 6 Rule 17 CPC filed by the plaintiff for addition of new ground of eviction of bona fide requirement where originally the suit was filed only on the ground of default in payment of rent, and it was contended that it would be the case of substitution of different cause of action, this Court negatived such contention and observed,-

> "(12). The learned counsel for the petitioner vehemently argued that the very basis of the decision of the Division Bench in Prem Lal's case (supra) is that the original cause of action in a suit for ejectment is the termination of tenancy by a notice under Section 106 of the Transfer of Property Act. According to the learned counsel this basis has been knocked out by the decision of the Supreme Court in V.Dhanapal's case (supra) wherein it has been held that notice under Section 106 of the T.P. Act is not necessary for maintaining a suit for eviction for an accommodation to which State Rent Control Act applies. The learned counsel on this basis contended that when notice terminating the tenancy was not the basic cause of action for a suit, the existence of ground of eviction under Section 13(1) of the Act will have to be taken as a cause of action. V. Dhanpal's case (supra) has therefore to be examined with the angle as to whether it lays down expressly or by necessary implication that grounds of eviction under State Act could constitute cause of action. A careful reading of the entire decision leads us to the conclusion that neither the question as to whether termination of tenancy by serving a notice under Section 106 of the T.P. Act would constitute a cause of action for a suit for ejectment nor the question as to whether grounds for eviction required to be proved under the State Rent Control Act would constitute causes of action were the posers in that case. What was decided in that case was summarized at the end of paragraph 18 of that judgment as follows:
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> > ".....But on the first assumption we have taken a different view of the matter and have come to the conclusion that

> determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act."

(13). This cannot be construed to mean that the Supreme Court has held that the notice terminating the tenancy did not constitute a cause of action or the grounds to be proved for getting an order of eviction under the Rent Act did constitute separate cause of action. Moreover, in Paragraph 24 of the decision in Prem Lal's case (supra), the Division Bench has also held that in a given fact situation, the cause of action which has arisen subsequent to the filing of the suit could also be allowed to be relied upon by way of amendment. It would be useful to reproduce Paragraph 24 to imbibe the full implication of the decision on this aspect.

> "The dictum of Swift J., in Eshelby vs. Federated European Bank Ltd., (1932(1) K.B.254) on which Jagat Narain J., relies, lays down that a plaintiff cannot except by consent, amend and set up a cause of action which has accrued since the issue of the writ. In the Court of Appeal, the majority of the learned Lord Justices expressed no opinion on the question. That apart, the strict rule enunciated by Swift J., is not strictly adhered to. There is no inflexible rule that a cause of action arising subsequent to the filing of a suit cannot be added by way of an amendment, introduction of a new case is no ground for refusal so long as the defendant has an opportunity of meeting the new case by amendment of written statement and by leading evidence in support of that defence."

> (14). It is therefore clear that in accordance with the view taken by the Division Bench in Prem Lal's case (supra), even if we assume that every ground of eviction enumerated in Section 13(1) of the Act, constitutes a separate cause of action, there is no prohibition against allowing a cause of action arising subsequent to the filing of the suit being relied upon by way of amendment."

Thus, it is clear that even if the ground of eviction enumerated in Section 13(1) of the Act of 1950 be taken to be constituting a separate cause of action, there is no prohibition in allowing consideration of a cause of action arising subsequent to the filing of the suit.

Learned counsel for the petitioner has stressed on the submission that the suit goes out of the jurisdiction of the trial court as soon as the amendment is allowed. The submission is squarely contrary to the mandate of Section 32 of the Act of 2001 that reads thus:

> **"Section 32. Repeal and saving.-**(1) The Rajasthan premises (Control of Rent and Eviction) Act, 1950 (Act No.17 of 1950) shall stand repealed with effect from the date notified under Sub-section (3) of Section 1 of this Act.
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> (2) The repeal under Sub-section (1) shall not affect,-
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> (a) anything duly done or suffered under the enactment so repealed; or
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> (b) any right, title, privilege, obligation or liability acquired or incurred under the enactment so repealed; or

(c) any fine, penalty or punishment incurred or suffered under the provisions of the enactment so repealed.

(3) Notwithstanding the repeal under Sub-section (1)-

(a) all applications, suit or other proceedings under the repealed Act pending on the date of commencement of this Act before any Court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one hundred and eighty days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to file fresh petition in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purpose of limitation such petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date of which the suit, out of which such appeal or proceeding originated, was filed;

(b) the provision for appeal under the repealed Act shall continue in force in respect of applications, suit and proceedings disposed of thereunder.

(c) all suits and proceedings instituted under the provisions of the repealed Act shall be effective and disposed of in accordance with such repealed law.

(d) any rule or notification made or issued under the repealed Act and in force on the date of commencement of this Act shall continue to govern the pending cases."

(underlining supplied for emphasis)

It is apparent on a bare reading of the provision that so far the pending suits and proceedings filed under the Act of

1950 are concerned, the same are required to be continued and disposed of in accordance with the provisions of the said Act of 1950 and it is required to be taken as if the said repealed Act is in force; and further it is required to be assumed that the Act of 2001 had not been enacted. When it is definitely required to be taken by the fiction that for the purpose of this suit, the Act of 1950 continues to remain in force and further that the Act of 2001 had not been enacted at all, it is difficult to appreciate as to under which particular law and which particular provision the petitioner attempts to canvass the proposition that the suit goes out of jurisdiction of the trial court after allowing amendment? The contention remains wholly spineless and had been made obviously in an attempt to somehow put spokes in the progress of the suit.

The writ petition remains totally bereft of substance and for the notices having been issued and for the respondent having been appeared, deserves to be dismissed with costs.

The petition is, therefore, dismissed with costs quantified at Rs.2,200/-.

(DINESH MAHESHWARI), J.

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